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USSN: 09/989,845
Filed November 21, 2001

REMARKS

Claims 1, 4, 8, 10, 11, 18, 22 and 24 have been amended and claims 2, 9, 19, and 21 cancelled in this response. The claims have been amended to reflect what the invention seems to be about-even as described in the title-fences having variable post positions, and as shown in Fig. 1, where the posts can be slided to provide 10 foot lengths, for example, on a road with grass on both sides, or to provide 3 foot lengths between posts on a road with a 200 foot fall-off cliff on one side. As shown in Fig. 1, the invention relates to a true barrier with barrier railings that are 5-20 feet long and ½ foot to 2 feet wide, as described in the specification on the top of page 7. The only way the railings can be varied in elevation, is where additional perforations are present, as, for example between the two railings shown in Fig. 1, so that the top railing can be lowered or a new railing added for additional protection. This application is of first impression to applicant's attorney, who was somewhat confused by the previous insertion of "...variably select elevation...". The term has been deleted from claims 1, 8 and 18.

Applicant has substantially amended the claims in an attempt to provide patentable subject matter, any suggestions by the Examiner in that regard would be seriously considered.

ELECTION/RESTRICTIONS

Claim 21 has been cancelled as not reading on the generally T-shaped elected species.

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CLAIM OBJECTIONS

Applicant believes amendment to claims 4, 11, 22 and 24 have answered the Examiner's objections.

CLAIM REJECTIONS UNDER 35 U.S.C. 112

Applicant has deleted the term "... to provide a variably select elevation of said longitudinally extending railing " from independent claims 1, 8 and 18, said term being found solely on page 6 of the specification at lines 14-15. This deletion should make all the claims understandable and obviate the 35 U.S.C. 112 rejection.

CLAIM REJECTIONS UNDER 35 U.S.C. 102

Claims 1-3, 8-10, and 18-20 are rejected as anticipated by Case, U.S. 3,388,892. In Case, applicant sees the longitudinally extending barrier railings as those designated as 20 and 34 in Fig. 1 supported by posts 14. As stated in col 2 at lines 35-44:

"Rails 20 are secured to the posts 14 by bolts 22 where shown in Fig. 16. The bolts 22 are associated with nuts that engage the rearward facing flanges of the rails 20. However, the exact details of this arrangement are of no import to the instant invention and are not illustrated other than as shown in Fig. 16.

Each of the rails 20 is fashioned with a pair of flanges 24, one directed upwardly and the other downwardly, through each of which there runs a T-shaped slot 26 as best shown in Figs. 4, 5, 6 and 9..." (emphasis added).

The "rearward facing flanges" are 24 with associated T-shaped slot 26 as shown in Figs. 3-6. The top portion comprises support for screening 33 as pointed out in col 1 at lines 25-37:

"This invention relates generally to fences, and more particularly it pertains to screen extensions to existing highway bridge railings.

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Wherever highway bridges pass over high-tension lines, railways, or other highways, it is desirable to screen the normal guardrails so that travelers cannot extend poles or throw articles over the side. Usually it was necessary to build temporary outrigging and barriers to protect the installers because prior erection methods required them to work from both sides of the structure.

An object of this invention is to provide a guard rail screen which can be installed from the safety of the highway area."

The top rail 82 encloses the top of the screen and is not a barrier railing.

One skilled in the art-reading applicants amended claims 1, 8 and 18 and looking at applicants' Fig. 1, would not equate the top screening nor top most member 82.

Applicants' barrier railing has a width of from ½ feet to 2 feet.

The pertinent figures of Case relating to barrier railings appear to be Figs. 1-2 and 16. The bolts 22 (Fig. 16) attach the posts 14 (Fig. 16 & Fig. 1) to the rails 20 (Fig. 16 & Fig. 1) by engaging flanges 24 having slots 26 (Fig. 4). Case teaches a very complicated guardrail/screen extension/end fan guard systems where the fastening means is not seen as being taught as slidably embraced in the T-shaped channel.

The posts of amended claims 1, 8 and 18 are vertical with vertical flange segments, the flange segments having perforations therethrough so that there is side attachment of the railings to the rail/flange segments. Case is just not seen as anticipatory of applicants' substantially amended claims 1, 3-5, 7, 8, 10-12, 14-17, 18, 20, 22 and 24. All of applicants' claims now require a serious barrier railing having a width of ½ foot to 2 feet with vertical flange segments through which fastening means connect the barrier railings.

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CLAIM REJECTIONS UNDER 35 U.S.C. 103

Claims 1-2, 4, 5, 7-9, 11, 12, 14-18, 19, 22 and 24 are rejected as obvious as unpatentable over McMullin, U.S. 3, 258, 250, in view of Case.

In the attachment to the Office Action, A2 is not seen as T-shaped, it is a flat exterior surface of railing 37. Applicant sees no T-shaped channel in any of McMullin's Figs. 1-5, such as shown in applicants' Fig. 2. McMullin's Figs. 1-5 appear more like applicants' posts-compare McMullin Fig. 4 to applicants Fig. 3. Applicants' claimed barrier railing is a solid panel as described at the top of page 7 of the specification and shown in Figs. 1 and 2. McMullin teaches hollow U-shaped rails where the fastening means require multiple elements and at least two bolts. No specific channel is seen, not even 86 in Fig. 5. A11 is not a T-shaped channel its reinforcing member 39, the same as 26. Applicant sees the rail 13 of McMullin as essentially the same as the rail 20 of Case neither being a solid panel; neither would lead to the solid panel railing 3 of applicants Fig. 2. There are many important limitations in applicants amended claims and these must be considered, as the court stated in In re Boe and Duke, 184 U.S.P.Q. 38, 40 (1974 C.C.P.A.):

"This court has stated that all limitation must be considered and that it is error to ignore specific limitations distinguishing over the references. In re Saether, 181 U.S.P.Q. 36, 39 (1974-C.C.P.A.); In re Glass, 176 U.S.P.Q. 489, 491 (1973 C.C.P.A.)."

Also, case law dictates that in proceeding from the prior art to the invention claims, one cannot base obviousness on what a person skilled in the art might try, or find obvious to

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try, but must consider what the prior art would have led a person to do, as stated in In re Tomlinson, Hall and Geigle, 150 U.S.P.Q. 623,626 (C.C.P.A. 1966):

Our reply to this view is simply that it begs the question; which is obviousness under section 103 of compositions and methods, not of the direction to be taken in making efforts or attempts. Slight reflection suggests, we think that there is usually an element of 'obviousness to try' in any research endeavor, that it is not undertaken with complete blindness but rather with some semblance of a chance of success, and that patentability determinations based on that as a test would not only be marked deterioration of the entire patent systems as an incentive to invest in those efforts and attempts which go by the name of 'research'.

And also affirmed in The Gillette Co. v. S.C. Johnson and Son, Inc., 16 U.S.P.Q. 2d 1923, 1928 (Fed. Cir. 1990).

Any combination of references would provide a hollow guardrail or a hollow screen support with lack of slidability of the posts. Applicant respectfully submits that neither Case nor McMullin, taken alone or in combination, teach or make obvious to one skilled in the art at the time of the invention was made, the invention of applicants' amended claims 1, 3-5, 7, 8, 10-12, 14-17, 18, 20, 22 and 24. British patent GB-1,396,301 considered by the Examiner but not cited against the claims is not seen as providing what Case and McMullin lack to make applicants' amended claims obvious to one skilled in the art.

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SUMMARY

It is respectfully submitted that the present application is in condition for allowance. In view of the foregoing amendments and arguments, applicant respectfully submits that Claims 1, 3-5, 7, 8, 10-12, 14-17, 18, 20, 22 and 24 are in condition for allowance; and applicant respectfully requests reconsideration and allowance of those claims. If the Examiner has suggestions that might place this application in better condition for allowance, a telephone call to Applicants' undersigned attorney would be appreciated.

Respectfully submitted,

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